87-61 (2)
No. ~~86-2016~~

IN THE

Supreme Court of the United States

CHARLES LALLAK, et al,

Petitioners,

vs.

R. KATHLEEN MORRIS, et al,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF
APPEALS FOR THE EIGHTH CIRCUIT

Brief of Respondents Morris, Busch, et al In Opposition

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STATEMENT OF CASE

The facts of the case are accurately and comprehensively set forth in the decision of the Court of Appeals (Joint Appendix at F-14 to F-20). In contrast, Petitioners' Statement of the Case is inaccurate, inadequate, and misleading. They first claim that a complete recitation of facts cannot be made because the original motions in the trial court were pre-discovery motions. To the contrary, as the Court of Appeals acknowledged, it had before it a massive, multi-volume, fact filled record including evidence developed during extensive discovery that occurred after the motions were decided in the trial court (Joint Appendix at F-19).

Having complained of the impossibility of reciting the full facts, Petitioners then go on to "incorporate by reference" the misleading and unreliable statement of facts by Petitioners Buchan and Myers in their related cases. While the Rules allow for a joint petition by parties similarly situated (U.S. Sup. Ct. Rule 19.4, 28 U.S.C.A.), the Rules do not go so far as to allow a Petitioner to separately use another petition as his own as Lallaks have attempted in this case.

The remainder of the Lallaks' Petition is a misstatement of the facts, unsupported by any record and as unreliable as the recitation by Petitioners Buchan and Myers.

Lallaks have alleged that there was no probable cause to arrest them because the children on whose statements the police relied lied or the children never made the statements attributed to them and the police officers lied. The very extensive record in this case is devoid of any evidence that the police officers lied or that the children were not credible witnesses. The truth is that Lallaks were arrested based on statements of children whose credibility was proven. A District Court Judge found probable cause based on those statements and signed an arrest warrant on May 23, 1984. (R.A. 8, 20). Lallaks simply did not come up with facts to rebut the evidence presented to the trial court by these Respondents or to show in any way that the police fabricated or misstated evidence to the judge who signed the arrest warrants.

SUMMARY OF ARGUMENT

The Petition does not present this Court with any reasons for granting certiorari. Petitioners have not shown that any conflict exists between the Eighth Circuit Court of Appeals

and any other circuit on the same issues. Nor have they shown that the Court of Appeals usurped the authority of this Court to decide a question of federal law.

ARGUMENT

Petitioners have failed to satisfy the requirements of Rule 17. In fact, Petitioners have not presented any legal argument whatsoever in their own Petition. We do not think that these Respondents are required to respond to arguments "incorporated by reference" in a Petition which seeks a writ of certiorari from the Supreme Court of the United States of America. For the convenience of the Court, however, in the event that Petitioners' novel approach is deemed sufficient, we make the following argument, which we freely admit is a nearly verbatim rendition of the arguments presented in opposition to the Buchan and Myers' Petition.

1.

Absolute Immunity For County Attorney.

The Court of Appeals has determined that the challenged conduct of the County Attorney was well within the scope of her duties as an advocate and was part of the prosecutorial function. Petitioners' assertions to the contrary are easily answered by pointing out that the first of the criminal charges against the Jordan adult defendants were brought in late September, 1983 and these were followed by multiple additional charges against additional adults through January, 1984. The police investigation into these cases led to charges against additional adults, including the Lallaks in May, 1984.

The challenged activities of the County Attorney involved her pre-trial contacts with child witnesses who

would be key state's witnesses in the cases charged in late 1983 as well as in the cases charged after January, 1984. A County Attorney has a right and a duty to meet with child witnesses for purposes of evaluating her cases and for trial preparation. When the prosecutor does this, she functions as an advocate and her activities are clearly protected under the shield long recognized at common law and by this Court in *Imbler v. Pachtman,* 424 U.S. 409, 430 (1976). The decision of the Eighth Circuit granting absolute immunity to Respondent Morris is well within the parameters established in *Imbler.* Furthermore, the Eighth Circuit carefully listed each of the allegations of prosecutorial misconduct which have been made by Petitioners against Morris. The Court then reviewed each of them and separately cited case law supporting absolute immunity for the alleged activities. There is no conflict between the opinion of the Eighth Circuit and the opinions of other federal circuit courts on the issue of absolute immunity for a prosecutor. Petitioners have failed to show such a distinction.

The Court of Appeals separately considered the allegations that the County Attorney withheld or suppressed "exculpatory evidence" and that absolute immunity is not available in respect to such activity. The Eighth Circuit addresses that issue at length (Joint Appendix F-25-27). Contrary to the assertions by Petitioners Buchan and Myers at page 10 of their Petition, the Eighth Circuit did not hold that absolute immunity would be available in regard to the withholding or destruction of exculpatory evidence. To the contrary, the Court held that even if that occurred in this case, the evidence allegedly destroyed did not result in constitutional injury to the Petitioners. Accordingly, the decision of the Eighth Circuit is *not* at odds with that of the Third Circuit in *Henderson v. Fisher,* 631 F.2d 1115 (3rd Cir. 1980) as wrongly stated by Petitioners.

2.

No Factual Support For Conspiracy Claims.

The conspiracy claims asserted by Petitioners fall, of course, like a house of cards in the absence of record evidence showing concerted action by two or more persons directed towards some unlawful purpose. The Eighth Circuit dismissed the conspiracy claims not solely because of a determination that the actors were immune but, instead, because of the fact "that the pleadings and record are deficient to create a triable issue as to the participation by any of the defendants in these appeals in a conspiracy to violate the plaintiffs' civil rights" (Joint Appendix F-37).

As in all of their other submissions to the courts in connection with this matter, Petitioners fail to cite any facts which would support a conspiracy claim. The Petitioners were not handicapped by an early filing of dispositive motions. They were beneficiaries and recipients of volumes of facts, reports, and analyses of the Jordan investigation before they ever filed their civil suits. If there was any evidence to support the conspiracy allegations in their complaint, they could and should have presented it to the lower courts. There is no reason for this court to review the decision of the Circuit Court since it is consistent with the case law across the land and suported by decisions such as that of this Court in *Celotex Corporation v. Catrett,* 106 C. Ct. 2548 (1986). Spurious references to Watergate do nothing to enhance Petitioners' right to review.

3.

Negligence/Due Process Claims.

Petitioners seek review of the decision dismissing their negligence claims. Once again, the Court of Appeals was

correct in concluding that a detailed search of the record failed to demonstrate the existence of any facts to support such claims. Once again, the Court of Appeals' opinion is consistent with the controlling law on this issue. There is no reason for this Court to undertake a review of that determination.

4.

Qualified Immunity For Police Officers.

Petitioners claim that they were deprived of the opportunity to present evidence which would have led the Court to deny qualified immunity for the police officers in this case. They argue that since the right to be free from arrest without probable cause was clearly established at the time of their arrest, the police officers were not entitled to qualified immunity.

The Eighth Circuit's decision came close upon the heels of this Court's pronouncement in *Malley v. Briggs,* 106 S. Ct. 1092 (1986) and precedes this Court's more recent pronouncements in *Anderson v. Creighton,* 55 L. W. 5092 (85-1520, decided June 25, 1987).

Anderson came to this Court after a pre-discovery dismissal motion was made and granted in the trial court. The Eighth Circuit Court of Appeals reversed but this Court has now held that the reversal was error. Borrowing from language in *Anderson:*

> "Whether an official protected by qualified immunity may be held personally liable for an alleged unlawful official action generally turns on the 'objective legal reasonableness' of the action,***, assessed in light of the legal rules that were 'clearly established' at the time it was taken . . . It should not be surprising . . .

> that our cases establish that the right the official is alleged to have violated must have been 'clearly established' in a more particularized and hence more relevant, sense: the contours of the right must be sufficiently clear that a reasonable official would understand that what he is doing violates that right."

Anderson, supra 55 L. W., at 5093.

Judge Ross' analysis of the qualified immunity issue reflects just such a "more particularized" evaluation of whether or not the rights claimed to have been violated in this case were "clearly established". Respondents cannot improve upon Judge Ross' description of the unsettled state of the law in the area of child sex abuse and the controversy raging over how such crimes should be properly investigated. In short, the decision of the Eighth Circuit is in accord with the law of this Court and does not deviate on this issue from the decisions of any sister circuits. Review by this Court is not appropriate under the standards set forth in Rule 17.

CONCLUSION

Respondents County Attorney and sheriff's officers respectfully request that the Petition for a Writ of Certiorari be, in all respects, denied.

Respectfully submitted,

August 5, 1987

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APPENDIX

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA
FOURTH DIVISION

IN RE: SCOTT COUNTY CASES
File No. 3-85-774

STATE OF MINNESOTA)
:ss
COUNTY OF SCOTT)

AFFIDAVIT OF DAVID N. EINERTSON

David N. Einertson, being first duly sworn, deposes upon oath and states as follows:

I.

That he is 40 years old, married, and the father of two children, ages 8 and 12, and employed as a Detective Sergeant with the Scott County Sheriff's Department. He was employed as a probation officer in Scott and Carver Counties from 1971 to mid-1973 after which he has served in the Scott County Sheriff's Department as a crime scene investigator (four years), general patrol (two years), and detective work (six years). In his work experience, your affiant has had substantial involvement in criminal investigations ranging from petty misdemeanors to serious felonies including robbery, kidnapping, criminal sexual conduct, and homicides. He has done contract instruction work for the Bureau of Criminal Apprehension. Your affiant's education includes a Bachelor of Science in Sociology and Psychology. Your affiant has completed several law enforcement courses in a variety of areas. He has had experience in investigating

criminal sexual conduct involving children and has had wide experience in dealing with juveniles ranging from his experiences as a probation officer up through his role as an investigator in the Cermak matter which included the arrest and convictions and/or pleas of guilty of six different individuals. Your affiant has been involved in several other criminal sexual conduct cases resulting in court convictions or guilty pleas or administrative handling through the Department of Human Services.

II.

That your affiant's first involvement in the Jordan sex cases was in late October, 1983 and in early November, 1983 when he was a complaining witness against James Rud. He has had general supervisory responsibility over Detectives Pint, Morgan, and Busch from the time of their initial involvement in the Jordan sex cases up through the dismissal of those cases in October, 1984.

III.

That your affiant has been named as a party defendant in the Lallak action only and that your affiant hd no direct involvement in the investigation into the criminal charges against the Lallaks, was not the complainant in the criminal charges that were brought, and did not participate in any conspiracy to deprive the Lallaks of their constitutional or civil rights.

IV.

That between September 27, 1983 and June 6, 1984, approximately 24 adults from the Jordan area were charged

with various counts of criminal sexual misconduct and that case resumes of the proceedings in criminal court and in family court as they apply to the several plaintiffs who have brought lawsuits herein are attached hereto as Exhibits A through H and that your affiant is familiar with the case histories summarized therein and believe the case histories to be true and correct.

V.

That in all of the criminal charges that were brought and the petitions that were filed in Family Court alleging the existence of juvenile protection matters, the presiding Judge found, in each case, that there was probable cause to support the criminal charges and sufficient facts of information to create a reasonable belief that juvenile protection matters existed warranting the removal of children from the custody of their parents.

VI.

That in all of the criminal charges that were brought, your affiant's deputies reviewed the proposed complaints with the county attorney who advised your affiant's deputies and other law enforcement officers that there was, indeed, probable cause to support the criminal charges being brought.

VII.

That your affiant understands and believes that pursuant to M.S.A. 260.165 a police officer has the authority, if not the duty, to remove a child from his or her surroundings if the police officer reasonably believes that the child's health or welfare is endangered by remaining in such surroundings.

That your affiant has personal knowledge concerning the information available to Detectives Busch and Morgan as of February 6, 1984 when the decision was made to remove the Myers children from the Myers home and that your affiant approved of such decision and assigned Detective Norm Pint and Detective Dave Menden to go to the Myers home to remove the children.

VIII.

That by February, 1984, your affiant believes that Deputy Sheriffs were interviewing as many as 20 or more children who had been identified as victims or suspected victims and that most of these children were in foster homes and subject to the jurisdiction of the court. Your affiant was informed that interviews with such children by law enforcement officers could not be conducted without the appropriate Guardian Ad Litem being present and the task of coordinating the schedules of persons who needed to be present for proposed interviews was becoming quite difficult. It was at this time, also, that many of these children were participating in interview sessions with the county attorney in preparation for testimony to be given by them in various family court hearings and in district court proceedings. There did come a time sometime in the spring, 1984 when your affiant would receive a photocopy of an appointments calendar indicating when particular children were going to be present at the courthouse. Your affiant would show the copy to his deputies so that they could interview a child if that was necessary at the time. These photocopies were routinely discarded shortly after their use. Your affiant no longer has any of these photocopies and was never requested to preserve them.

IX.

Your affiant also has knowledge concerning a certain video-tape that was made by Detective Pint and Detective Busch on May 22, 1984 during the course of a visit to the Quarry Camp Grounds with Andy and Amy Myers, Tom Price, and Guardian Ad Litem Thompsen. Detective Pint advised your affiant that he intended to obtain such a tape and your affiant varily believes that such a tape was made and returned to the sheriff's office. Your affiant never viewed the tape. Your affiant never received any requests for such a video-tape from Kathleen Morris nor did he ever receive any instructions from her to destroy or erase such tapes as may have been made. Deputies Busch and Pint did report to me after the visit to the camp ground that the tape which had been made was of extremely poor quality and not useable for any purpose.

X.

That your affiant genuinely believed at all times material that there was probable cause to support each and every criminal charge that was brought against any of the adult defendants in the Jordan sex cases on the basis of the probable cause set forth in the criminal complaints alone. In addition to that information, however, your affiant is aware of an overwhelming amount of other facts which, when considered in combination with each other and with the probable cause set forth in the criminal complaints, created a reasonable belief in the minds of your affiant's deputies and in your affiant's own mind that significant child abuse had been taking place in Jordan and that the persons charged were involved as perpetrators. Such additional facts contributing to the "totality of the circumstances" includes the following:

1. Known family histories of sexual abuse involving the Ruds, Meisinger, Marlene Germundson, and Chris and Helen Brown families;

2. Chris Brown's admission that her oldest daughter (Stacy Krahl) was fathered by Chris' father;

3. A history of chemical dependency in a significant number of the families that were involved;

4. Failed polygraph tests;

5. One parent (Robert Bentz) refusing permission to a deputy to interview that parent's children concerning possible sex abuse outside of the Bentz family;

6. Physical evidence of human feces on bowling pins, candles, etc. corroborating stories being told by various child victims:

7. Some adult defendants accusing other adult defendants of criminal sexual misconduct (the accusers include Jim Rud, Irene Meisinger, Marlene Germundson, and Charles Lallak);

8. Wanda Meger making accusations against the Lallaks (see report of Detective Pint dated 6/1/84);

9. The involvement of BCA from the beginning and the concurrence of its agents that the charges being brought were founded upon probable cause (this is particularly true in the Buchan case where the BCA agent, Patrick Shannon, provided all of the information that led to the issuance of the criminal complaint and the determination of probable cause by a judicial officer);

10. Jim Rud's implication of several other adults in Rud's admitted criminal sexual abuse.

XI.

That your affiant has read the complaints in all of the civil actions herein and genuinely does now know what constitutional rights are claimed to have been unlawfully damaged or impaired by the conduct of your affiant and any of his deputies.

FURTHER AFFIANT SAITH NOT.

/s/DAVID N. EINERTSON
David N. Einertson

STATE OF MINNESOTA)
:ss
COUNTY OF SCOTT)

Subscribed and sworn to before me this 29th day of April,-1985.

/s/BERNICE COLLINS
Notary Public — Minnesota
Scott County
My Commission Expires July 30, 1991.

Einartson Exhibit F

CHARLES AND CAROL LALLAK

On May 23, 1984, criminal complaints charging Charles and Carol Lallak with criminal sexual misconduct were prepared and presented to a judicial officer. The judge examined the probable cause set forth in the criminal complaints and found that there was probable cause to support the charges and caused warrants to be issued. Detectives Busch and Morgan and perhaps another police officer were involved in making the arrests. The charges were based upon information supplied by Andy Myers (DOB: 6-19-72) to Detectives Pint and Busch on May 3, 1984; upon infor-

mation supplied by Greg Myers to Pat Morgan on or about February 7, 1984; and upon information supplied by Andy Myers and Amy Myers (DOB: 4-8-79) to Detective Pint on or about May 22, 1984.

There was no detention of the minor children of the Lallak's since the Lallaks had removed the children out of the jurisdiction shortly after the arrest of Greg Myers on or about February 6, 1984.

The defendants made combined first appearances in Court on May 24, 1984. An Omnibus Hearing was scheduled for May 31, 1984. The defendants requested that all proceedings be stayed pending resolution of certain issues in the Appeals Court litigated in another of the Jordan Sex Cases and the request was granted.

Criminal charges were dismissed in October, 1984.

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA
FOURTH DIVISION

IN RE: SCOTT COUNTY CASES
File No. 3-85-774

STATE OF MINNESOTA)
:ss
COUNTY OF SCOTT)

AFFDAVIT OF MIKE BUSCH

Michael Busch, being first duly sworn, deposes upon oath and states as follows:

I.

That he is 36 years of age and employed as a detective within the Scott County Sheriff's Department and has been

so employed for the past three years. Before that, he was a patrolman for six years. Your affiant received a Bachelor of Arts degree in Criminal Justice from the University of Minnesota in 1975 and an Associate of Arts degree in Law Enforcement from Normandale Junior College in 1972-73. Your affiant served in the United States Army as a Military Policeman and is a Viet Nam veteran. Since becoming employed in the law enforcement field, your affiant has attended various seminars including a 40 hour course dealing with the investigation of criminal sex crimes which was put on at the University of Louisville during the summer of 1983. Your affiant also had on-the-job training from Scott County Detective George Lille (deceased, 1983), who, before his death, was recognized as one of the foremost experts in the field of child sex abuse in the State of Minnesota and who was involved as a supervisory officer in the Cermak sex abuse cases in the early 1980's. Prior to the Fall, 1983, your affiant was involved in at least ten other criminal cases involving sexual abuse of minors and that in several of those cases there were criminal convictions by plea or trial. Your affiant has ben called upon by neighboring police departments in the metropolitan area to assist them in criminal sex investigations because your affiant does have a reputation as being a specialist in the field.

II.

That your affiant has been named as a party defendant in the Bentz, Lallak, and Meger cases.

III.

That this affidavit is submitted in support of your affiant's motion for dismissal and/or summary judgment in the ac-

tions referred to in the immediately preceding paragraph and in support of similar motions of the other deputy sheriffs and R. Kathleen Morris in the actions in which they have been sued. Your affiant will summarize his involvement in all of the cases as briefly and concisely as he can and in chronological order.

IV.

That the Scott County Sheriff's Department first became involved in the investigation into the Jordan sex cases in late October, 1983 after James Rud had been charged and arrested on the basis of an investigation done by the Jordan Police Department and the Bureau of Criminal Apprehension in late September, 1983.

V.

That your affiant participated in investigations that led to the charging and arrest of several adult defendants from Jordan in November and December, 1983.

VI.

That child victims identified very early in the investigations as having been abused by James Rud also reported to Jordan police officers that they had been abused by, among others, Tom and Helen Brown. Two of the children victims making accusations against Tom and Helen Brown were the children of Chris Brown (Helen Brown's sister). These children, Stacy Krahl (dob: 1/26/74) and John Krahl (dob: 7/24/75) along with Vicky Kath (dob: 6/25/73) made statements to police officer Larry Norring, Jordan Police Department, on January 10 and 11, 1984)

indicating that on multiple occasions during the summer, 1983, (1) "Aunt Helen" rubbed Stacy's vagina and performed oral sex on her; (2) that Helen put her finger in Stacy, Vicky Kath, and Brandy Brown's vagina; (3) that Tom Brown performed oral sex on such children; (4) that Helen Brown performed oral sex on John Krahl and then made him perform oral sex on her and made him suck on her "tits". These activities all took place at Tom and Helen Brown's house. A true and correct copy of the police reports prepared by Officer Norring are attached hereto as Busch Exhibit A. On January 11, Norring relayed the information he had received from the children to your affiant who, on the basis of such information, swore out a criminal complaint charging Tom and Helen Brown with various crimes of sexual misconduct. Your affiant swore to the contents of the complaint (including the reliability of Larry Norring as a source) before a judicial officer who examined the complaint and then signed warrants for the arrest of Tom and Helen Brown. Your affiant had conducted no interviews with either Stacy Krahl, John Krahl, or Vicky Kath prior to January 11, 1984 and was not involved in any way in causing any of the three children mentioned above to make accusations against Tom and Helen Brown and further, that to the best of your affiant's knowledge, no other deputies employed with the Scott County Sheriff's Department were involved in any such contacts with the above-mentioned children. A true and correct copy of the criminal complaints filed against Tom and Helen Brown on January 11, 1984 and the warrants issued by the appropriate judicial officers are attached hereto as Busch Exhibits B and C and incorporated herein by reference.

VII.

That on January 20, 1984, Detective Patrick Morgan swore to criminal complaints against Bob and Lois Bentz based upon facts which had been revealed to him and your affiant in interviews with Jeff Brown (dob: 4/14/73) and Stacy Krahl (dob: 1/26/74) on January 12, 13 and 20, 1984. More specifically, on January 20, 1984, Jeff Brown described an incident that had occurred at the home of Lois and Bob Bentz during the summer, 1983 in which Bob and Lois Bentz were said to be involved in "hide and seek" games with children including Jeff, his sister, Brandy Brown, Stacy Krahl, Kathy Fossen, Billy Bentz, and Tony Bentz and that the game involved the adults finding the children and then having oral sex with them. Your affiant's report, dated January 24, 1984, concerning his January 20 interview with Jeff Brown is attached hereto as Busch Exhibit D and incorporated herein by reference. Prior to January 20, your affiant had had contacts with Jeffrey Brown on just two occasions (January 11 and January 12) and in the course of the interview with Jeff on January 20, your affiant did not use leading or suggestive questioning nor did your affiant apply pressure upon Jeffrey to make accusations against any adults, but that your affiant instead directed the subject of the discussion to general areas and then asked direct and open-ended questions. For example, your affiant might say the following: "Jeff, this morning I want to talk to you about any sexual touching between adults and children that you may have seen or been involved in at Chris Brown's house. Did you ever see such activities? . . ." When Jeff, then 11 years of age, would answer, further questions would be asked to determine the meaning of the words that he might use to describe

sexual activities and as much detail would be obtained concerning each event that might be described. This was your affiant's practice in dealing not only with Jeff Brown, but all other child victims whom he encountered in the course of his investigation into the Jordan sex cases.

VIII.

That in respect to the Bentz family, your affiant did contact Mr. Robert Bentz by phone. The purpose of the call was to request permission to speak with his children whose names had come up as possible victims in interviews with other children. Mr. Bentz was reluctant to permit such interviews and asked if he would be allowed to be present during the interviews. Your affiant told him that such would be allowed, but that your affiant's preference was that he not be present. Mr. Bentz stated that he would discuss the matter with his wife and then get back to your affiant. The following day, your affiant called Mrs. Bentz and she stated that your affiant would not be permitted to interview the Bentz children under any circumstances.

IX.

That on the basis of the information supplied by Jeff Brown to your affiant and that provided by Stacy Krahl to Deputy Morgan, your affiant was satisfied as of January 20 that there was probable cause to believe that Robert and Lois Bentz were guilty of various crimes involving criminal sexual misconduct. Your affiant believed Jeff Brown to be a reliable witness at that point based upon the fact that (1) his statements were consistent with statements being made by other children concerning various adults; (2) he was "street-wise" and seemed quite familiar with sexual termi-

nology and jargon; (3) Jeff was closely associated with the Chris Brown family wherein there was undisputed evidence of incest, a history of domestic disputes which your affiant had been called out on over the years, and a history of chemical dependency affecting members of the Brown family including Tim Brown. Further, your affiant reasonably believed as of that date that the health and welfare of the Bentz children were in danger by their continued presence in the Bentz home. Your affiant withheld no material information from the county attorney nor from the judge before whom the complaint was signed and sworn to. A copy of the criminal complaints, the police reports relied upon, and the warrant based upon probable cause issued by the court are attached hereto as Busch Exhibits E, F, and G and incorporated herein by reference.

X.

That on February 6, 1984, your affiant and Detective Pat Morgan performed a probable cause arrest upon Greg Myers at the Jordan police department. This arrest followed separate interviews with three different children who had been sexually abused by him. The first of these children, Jeff Brown, had stated in an interview with your affiant at the Scott County sheriff's office that he had witnessed sexual events involving Greg Myers and child victims which occurred during 1983 at the Quarry Camp Ground and at the Tom and Helen Brown residence. Jeff's Guardian Ad Litem, Diane Johnson, was present during the interview. Detective Pat Morgan, at a separate time and location in the courthouse, interviewed Brandy Brown (then nine years of age) in Diane Johnson's presence. Brandy told Detective Morgan about an incident at the Quarry Camp Ground

which involved sexual touching between Greg Myers and children victims. After conferring with Detective Morgan, your affiant re-interviewed Brandy Brown and the substance of what she told your affiant is set forth in a report dated February 7, 1984. After the Brand and Jeff Brown interviews, your affiant interviewed Kathy Fossen, then 12 years of age. The interview occurred at the Scott County sheriff's office and within listening distance of Kathy's mother, Anita Fossen. Kathy Fossen described several incidents that had occurred during the summer, 1983 in which Greg Myers, who she described as a policeman with the Jordan Police Department, had performed sexual acts with children, including her. This interview was only the second time that your affiant had ever had any contact with Kathy Fossen (the first time being on January 27, 1984) and to your affiant's knowledge, Kathy Fossen had not previously had any contacts with Detective Morgan or Detective Pint. Your affiant determined that the information being provided by Kathy Fossen was reliable because (1) she was still living at home with her parents and had no known reasons to fabricate any accusations against anybody, (2) other child victims had repeatedly referred to Kathy Fossen as having been a victim in various sexual incidents with adults, (3), Kathy, herself, was admitting that she had been involved sexually with other kids, and (4) her demeanor was such that your affiant believed her to be telling the truth. The reports of the interviews with Jeff and Brandy Brown and Kathy Fossen are dated February 7 and are attached hereto as Busch Exhibits H, I, and J. Prior to February 6, 1984, your affiant did not have specific information indicating that Greg Myers had been involved in sexual activities at the Quarry Camp Grounds or at the

Helen and Tom Brown residence during 1983. Such information was revealed by the above-named child witnesses in separate interviews for the first time on February 6, 1984. Based upon the information that had been provided, together with other information establishing that Greg Myers had been at the Quarry Camp Grounds at the time indicated by the child witnesses and information also linking Greg Myers with other adults who had been previously charged with criminal sexual misconduct (including the Bentz's and the Browns), your affiant determined that there was probable cause to believe that Greg Myers had been involved in criminal sexual misconduct with children and your affiant further reasonably believed that the safety of the Myers children was in jeopardy by their continued presence in the Myers' home. It was on that basis, together with advice from the county attorney that probable cause existed, that a probable cause arrest was made of Greg Myers on February 6. On February 8, 1984, your affiant swore out a criminal complaint against Greg Myers before a judicial officer who examined the complaint, determined that probable cause did exist, and issued an Order of Detention based upon such probable cause. A copy of the Complaint and the signed Order of Detention is attached hereto as Busch Exhibit K and incorporated herein by reference. The interviews with Jeff and Brandy Brown and Kathy Fossen had been scheduled by your affiant or by someone else in the sheriff's office prior to February 6 as part of the on-going investigation into the Jordan sex cases. These interviews were not requested or ordered by R. Kathleen Morris. These interviews had been scheduled and accomplished strictly at the discretion of investigators in the sheriff's department.

XI.

On May 23, 1984, your affiant was the complainant in criminal charges that were prepared and filed against Duane and Dee Rank, Carol and Charles Lallak, and Jane Myers. The complaints were based upon information received in interviews with Andy Myers on May 3 and May 22, 1984; with Amy Myers on May 15 and May 22, 1984; and from information previously supplied by Jeff Brown, Brandy Brown, John Krahl, and Greg Myers. Key information included the fact that on or about February 7, 1984, Greg Myers had voluntarily taken two separate lie detector tests and had failed such tests. He had stated to your affiant on or about that date that certain people had been at the Quarry Camp Ground in the summer, 1983 as was being alleged by a variety of child victims. The fact that Greg Myers had failed two lie detector tests added, in your affiant's opinion, to the credibility of child victims who were making accusations against him including the credibility of Andy and Amy Myers. On or about May 3, 1984, your affiant received information from Tom Price concerning information being provided by Andy Myers which implicated additional adults as perpetrators of sexual abuse upon child victims. Your affiant conferred with Mr. Price on May 3 and learned from him the details of what had been disclosed by Andy Myers in a therapy session that had taken place approximately one week earlier. Your affiant then participated in an interview with Andy Myers at 1:30 P.M. at the office of Tom Price. The interview took place in the presence of Detective Pint and Guardian Ad Litem Paul Thomsen. In the interview, Andy Myers disclosed incidents of sexual abuse occurring at the Quarry Camp Grounds including an incident where Andy was sep-

arately assaulted sexually by seven different adults including his mother and step-father. Andy indicated that the incident took place at the camp site of Tom and Helen Brown. Andy drew a sketch of the area which, upon your affiant's own personal knowledge, largely coincided with certain sites where certain of the adults who he identified were on record as having been present at the camp ground at the time described by Andy. In the interview, Andy also described an incident occurring at Tom and Helen Brown's residence which involved sexual involvement between adults and children. Some of the allegations made by Andy on May 3 implicated Duane and Dee Rank and Charles and Carol Lallak. Your affiant, however, believed that further investigation was appropriate since, among other things, your affiant knew that no children were then in jeopardy. The Ranks had no children. The Lallaks had previously dispatched their children outside of the jurisdiction. The Myers' children were already in foster homes. Investigation continued on May 15, 1984 with an interview of Amy Myers at the office of Tom Price on May 15, 1984. Present at the time of this interview was Tom Price, Detective Pint and your affiant. Paul Thomsen could not be present at the time and designated Mr. Price as the third person to be present during the interview in accordance with a prior Court Order which allowed for such designation. Prior to the interview, your affiant spoke with Tom Price who advised that during prior therapy sessions, Amy had discussed being sexually abused by adults and having seen other children being sexually abused. In the course of the interview which followed (approximately 50 minutes in length), Amy provided information which corroborated the information previously given by Andy and others. Dur-

ing the interview, Detective Pint asked Amy why she had not talked about these things on prior occasions and she stated at that time that on prior occasions she had been "pretending when she stated nothing had happened." See attached Busch Exhibit L. Detective Pint advised that Amy had not previously denied such activities, but merely had failed to disclose them. As a part of the continuing investigation, your affiant accompanied Detective Pint, Tom Price, Paul Thomsen, and Andy and Amy Myers in a visit to the Quarry Camp Grounds on May 22, 1984. Detective Pint attempted to make a video tape of various areas at the camp ground and interviews with the children at the camp grounds were also video-taped. During the interviews, Amy and Andy Myers repeated what they had stated on May 3 and May 15. They did not make statements which tended in any way to exculpate any of the adults previously charged or to be charged on May 23. Your affiant viewed at least a portion of the video tape of the interview at the sheriff's office afterwards and recalls that it was of extremely poor technical quality. Extraneous noise (wind, airplanes, background noise) masked what was being said by the children or by their interviewers to a large extent. The video portion was inadequate. Strangers were depicted on the tape which would have made the tape useless as demonstrative evidence. Upon information and belief, Detective Pint returned to the camp grounds one week later, without anybody else, in order to portray areas where the children had described events having taken place. He taped over the May 22 tape. Kathleen Morris did not, to your affiant's knowledge, see the tape and, to your affiant's knowledge, did not order or request that it be erased.

XII.

Prior to May 3, 1984, your affiant had never met Tom Price. Prior to May 3, your affiant had no contacts with Andy Myers except possibly on one occasion, (approximately February 13, 1984) when your affiant's notes indicate that Andy had made a statement at the sheriff's office indicating that his step-father, Greg, had previously told him not to talk to police without his step-father being present. Prior to May 15, 1984, your affiant had never had any interviews with Amy Myers. In addition, your affiant is informed that on February 7, 1984, Greg Myers confirmed that the Ranks and the Lallaks were at the camp grounds with Greg Myers and his family at the time being indicated by Andy and Amy Myers.

XIII.

That at the time of the May 22, 1984 visit to the camp grounds, most of the information concerning locations where sexual incidents had occurred was provided by Andy Myers. The purpose of the interview was not to obtain information concerning the fact that incidents had occurred, but rather to determine as precisely as possible *where* they had occurred. There was no "cross-germination" of information between Andy and Amy.

XIV.

That on the basis of the information furnished by the Myers children on May 3, 15, and 22, the information previously furnished by Greg Myers, and statements from Jeff Brown, Brandy Brown and Jeff Krahl placing the Ranks, Lallaks, and the Myers families at the camp

grounds at the times being described by Andy Myers and Amy Myers, your affiant swore out criminal complaints against Duane and Dee Rank, Charles and Carol Lallak, and Jane Myers. The complaints were sworn to before the Honorable Martin Mansur and he examined the contents thereof and issued probable cause warrants on May 23, 1984. Each of the complaints had been prepared in the county attorney's office and your affiant was informed by the county attorneys' office that the information known to your affiant did constitute probable cause to charge and arrest the above-named individuals. At no time during any of your affiant's prior interviews with Andy or Amy Myers (three times) had either of them denied having been sexually abused by the persons who were charged on May 23 nor was your affiant aware of any other information or evidence as of May 23 tending to exculpate the persons who were charged on that date. Copies of the criminal complaints in each of the charges brought above are attached hereto as Busch Exhibits M, N, O, P, and Q. Your affiant's investigative reports dated May 15, 16, and June 4, 1984 are attached hereto as Busch Exhibits R, S, and T.

Your affiant is the complainant in many of the criminal complaints that were filed against the plaintiffs in these civil actions. At no time did your affiant sign a criminal complaint which contained information that he had not personally developed or received from another law enforcement officer. An example of the former situation is the complaint against the Browns which your affiiant signed based upon the information supplied to him by another police officer, Larry Norring. There were occasions in the late Winter and Spring, 1984 where

new information was passed along to your affiant from the county attorney's office because of something that had been said by a child witness during a court preparation session. At no time did your affiant sign a complaint which included that information unless and until your affiant or another law enforcement officer personally contacted the child witness in question in order to determine what facts were known and whether the information was reliable. Your client would not add and did not sign a complaint containing information supplied by a prosecuting attorney or by any other source (therapists, guardian ad litems, child protection workers, etc) without your affiant personally determining what the facts were.

FURTHER AFFIANT SAITH NOT.

/s/ MICHAEL BUSCH
Michael Busch

STATE OF MINNESOTA)
)ss
COUNTY OF SCOTT

Subscribed and sworn to before me this 30th day of April, 1985.

/s/ MARLENE KOCH
Marlene Koch
Notary Public - Minnesota
Scott County
My Commissioner Expires
Dec. 8, 1988